IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 37767 of 2003(U)

PETITIONERS:

1. RAVICHANDRAN S/O. DANDAPANI CHETTIAR,
   SUMANGAL, VANIAMKULAM, OTTAPPALAM TALUK,
   PALAKKAD DISTRICT

2. D.VENKITACHALAM S/O. DANDAPANI CHETTIAR,
   SUMANGALI, VANIAMKULAM, OTTAPPALAM TALUK,
   PALAKKAD DISTRICT

3. N.RADHAKRISHNAN S/O. RAMAN NAIR,
   NETTATHU HOUSE, KANIAMPURAM, OTTAPPALAM TALUK,
   PALAKKAD DISTRICT

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT:

M/S. OTTAPPALAM KURIES AND LOANS PRIVATE
LIMITED, OTTAPPALAM, REPRESENTED BY ITS
MANAGING DIRECTOR K.BALAKRISHNAN

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 37767 OF 2003

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE EXECUTION PETITION NO.221 OF 2003 FILED BEFORE THE COURT OF THE MUNSIFF, OTTAPPALAM IN OS NO.340 OF 2001.

EXT.P2 : TRUE COPY OF THE AFFIDAVIT AND APPLICATION FILED BY THE PETITIONERS BEFORE THE COURT OF THE MUNSIFF, OTTAPPALAM.

EXT.P3 : TRUE COPY OF RECEIPTS ISSUED BY THE RESPONDENT.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 37767 OF 2003

Dated this the 30th day of July, 2007

JUDGMENT

Heard both sides. The grievance of the petitioners who are judgment debtors ordered to be arrested in execution of a money decree is that even as their application for recalling the warrant was pending, the learned Munsiff has repeated arrest warrant against them. While admitting and granting stay, this Court imposed a condition that the petitioners pay Rs.7,500/- each towards the decree debt. Sri.Mohanakannan, counsel for the petitioners submits that the above condition has been complied with and a total amount of Rs.22,500/- has been paid. Sri.Mohanakannan asserts that in this case no enquiry as envisaged under Order XXI Rule 40 has been conducted by the execution court as to whether the petitioners willfully neglected to pay the debt. The initial order of arrest according to the learned counsel was issued by the learned Munsiff on the basis that no objections were filed by the petitioners to the notice under Rule 37. The above submission appears to be correct since I find that the petitioners pray in this Writ Petition that they be given an opportunity of filing objections to the execution petition.

Smt.Nisha Bose, learned counsel for the respondent submits that

the decree holder is keen only on recovering the amounts due to them and not upon the arrest and detention of the petitioners. In view of the obvious position that an enquiry as envisaged under Order XXI Rule 40 has not so far been conducted, I am inclined to direct conduct of such an enquiry , but only on conditions. Accordingly, the Writ Petition is disposed of issuing the following directions.

The execution court is directed to hold up that further proceedings in the execution petition for arresting and detaining the petitioners in civil prison and to conduct an enquiry under Order XXI Rule 40 Cr.PC regarding the liability of the petitioners to arrest and detention subject to the following conditions:

The petitioners together will pay a total amount of Rs.10,000/- towards the decree debt on the first of every month commencing from 1st September 2007 till such time as the enquiry ordered herein is completed and fresh orders based on the enquiry are passed. In the case of the petitioners default payment of any of the instalments, the learned Munsiff will summarily stop the enquiry. Under such an event, the order of arrest presently passed against the petitioners will revive. The enquiry will be completed by the learned Munsiff at his earliest and at any rate within six months of receiving copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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